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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1x and Decision  
01-09-060

Rulemaking 02-01-011

**REPLY OF PACIFIC GAS AND ELECTRIC COMPANY,  
SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN  
DIEGO GAS & ELECTRIC COMPANY TO THE RESPONSE  
OF THE CALIFORNIA MUNICIPAL UTILITIES  
ASSOCIATION**

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January 2, 2007

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ASSOCIATION**

Pursuant to Rule 16.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and with the permission of the assigned administrative law judge, Pacific Gas and Electric Company (PG&E) files this reply to the December 20, 2006, *Response of the California Municipal Utilities Association to the Petition of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to Modify Decision 06-07-030.*

Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) join in this reply.

On November 20, 2006, PG&E, SCE, and SDG&E jointly filed a petition to modify D.06-07-030 to incorporate protocols to allocate 80 MW of new municipal departing load (MDL) exemptions from responsibility for the costs of DWR power. As the California Municipal Utilities Association (CMUA) indicates in its response, the proposed protocols represent a cooperative effort between PG&E, SCE, SDG&E, and representatives of municipal utilities.

However, and without clear explanation, the municipal entities never "signed on" to the

proposed protocols. CMUA's petition clarifies, at least with respect to CMUA, why it withdrew, without real explanation, from that cooperative process.

In its response CMUA requests that each individual MDL customer, transferred or new, be given an option (or perhaps periodic options, it is not clear) to decide whether or not to be exempt from responsibility for power procured by the California Department of Water Resources (DWR). (CMUA Response, pp. 4-7.) In terms of rates, CMUA is requesting that individual MDL customers have the option to decide whether or not the Power Charge Indifference Adjustment (PCIA) is applicable to them, depending on whether the PCIA rate is positive or negative based on current market conditions.

This proposal makes no sense, and so should be rejected.

**I. CMUA'S PROPOSAL THAT ALL MUNICIPAL DEPARTING LOAD CUSTOMERS BE GIVEN OPTIONS TO DECIDE WHETHER OR NOT TO BE RESPONSIBLE FOR THE COSTS OF DWR POWER IS ILLOGICAL AND INCONSISTENT WITH COMMISSION DECISIONS, AND SO SHOULD BE REJECTED**

Contrary to CMUA's assertions, the Commission did not intend to give MDL customers ongoing options with respect to whether they would, or would not, be responsible for the costs of DWR power.

In various decisions, including but by no means limited to D.02-11-022, D.03-04-030, D.03-07-028, D.03-07-030, D.04-11-014, D.04-12-059, D.06-03-004, as well as D.06-07-030, the Commission has determined how to fairly spread cost responsibility for the costs of DWR power to bundled, direct access, and departing load.<sup>1</sup>

These decisions focus on whether, and to what extent, DWR took various anticipated

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<sup>1</sup> The Commission has also had to consider how to fairly spread cost responsibility for "AB 1890 ongoing transition costs," and has done so for PG&E in, for example, D. 05-12-045 in PG&E's 2006 ERRA forecast proceeding, in which the Commission made clear that ongoing CTC was to be calculated according to the "statutory" method. (Ordering Paragraph 6.)

loads into account when it procured DWR power. (e.g. D.03-07-028, p. 35.) It would be a complete evisceration of these decisions to now say that they did no more than decide that in the future, MDL customers would have one-time or periodic options to decide whether or not to be responsible for the costs of DWR power.

In fact, throughout the proceedings leading up to those decisions, CMUA argued strenuously, and without qualification, that MDL responsibility for the costs of DWR power should be, at most, very limited. Those arguments did not focus on, or discuss in any way, the idea that MDL customers should, in the future, have the option to determine that they would, in fact, bear responsibility for DWR power costs.

As CMUA candidly acknowledges, the reason for its position now is that, contrary to earlier expectations, at this time departing load customers who are responsible for the costs of DWR power will face lower rates, all else equal, than departing load customers who are not responsible for the costs of DWR power due to the fact that the PCIA, which is applicable to departing load customers responsible for the costs of DWR power, is negative. (CMUA Response, pp. 3-4.)

In other words, CMUA is requesting that MDL customers be allowed periodically to re-classify themselves according to which classification is expected to be the lowest cost. But cost allocation is a zero sum game. If CMUA's request that MDL customers have the periodic option to choose the lowest cost alternative is granted, then this can only work to the unfair disadvantage of remaining customers.

CMUA attempts to justify its proposal by arguing that various Commission decisions were intended to give MDL the option to choose whether or not to be responsible for the costs of DWR power. (*Id.*, pp. 5-7.) CMUA misreads those decisions. For example, CMUA notes that

D. 06-03-004 says

In D.04-11-014, the Commission adopted eligibility criteria for existing POUs ***whose customers may qualify*** for the limited CRS exemption applicable to “***transferred load***” as discussed in that order. (CMUA Response, pp. 6-7 (citing D.04-11-014 and adding emphasis).)

But the quoted language simply means that, depending on the circumstances of any individual MDL customer, that customer may or may not be responsible for the costs of DWR power under the Commission-determined criteria. For example, transferred MDL served by a municipal utility that was in PG&E’s Bypass Report is exempt from the DWR power charge.

The quoted language does not say, and contrary to CMUA’s assertion was not intended by the Commission to mean, that individual MDL customers can choose whether or not to be responsible for the costs of DWR power regardless of the Commission-established criteria used to make that determination.

As PG&E, SCE, and SDG&E describe in their petition, in response to the request of the municipal entities and in the spirit of compromise (and in spite of the force of all of the points just made in this reply), PG&E, SCE, and SDG&E agreed to a one-time option in the limited context of the protocols for allocation of the 80 MW of additional exemptions for new MDL from responsibility for the costs of DWR power. Now, CMUA is attempting to bootstrap that offered compromise into obtaining an unjustified, illogical, unlimited option for all MDL customers.

PG&E, SCE, and SDG&E remain willing to stand by their limited offer for a one-time option in connection with the 80 MW protocols for new MDL. But to the extent that CMUA does not believe that an option should be extended to any limited subset of MDL customers if it is not extended to all, then the solution that is fairer to all customers, and far more consistent with the Commission’s decisions on DWR cost responsibility, is to remove the one-time option

from the proposed 80 MW protocols for new MDL. The fairer solution to CMUA’s perceived inequity is that *all* MDL customers who are determined to be exempt from DWR cost responsibility pay the rates applicable to exempt customers, regardless of whether, due to then-current market conditions, those rates happen to be higher or lower than the rates paid by otherwise comparable customers who have been determined to be responsible for the costs of DWR power.

## **II. DISCUSSION OF CMUA’S SPECIFIC RECOMMENDED CHANGES TO THE PROPOSED 80 MW PROTOCOLS**

At pages 8 and 9 of its response CMUA makes three specific recommendations to the proposed protocols.

### **A. Footnote 2**

CMUA’s recommended change here is not explained, and does not make sense. Nothing in Step #1 of the proposed protocols, which includes footnote 2, has anything to do with the provision of information by any specific MDL customer to an investor-owned utility. Therefore, CMUA’s proposed new language, whose purpose is unclear and which relates to the investor-owned utilities receiving, or not receiving, undefined “information directly from the MDL customer,” should not be added to the protocols.

### **B. Step #5**

CMUA’s language here is intended to eliminate the one-time option language with respect to new MDL subject to the protocols. For the reasons discussed above, this language should be maintained if the Commission decides to extend this limited, one-time option to the new MDL customers subject to the protocols.

If the Commission decides that on balance no MDL customer should receive such an option, then the protocols should be revised generally to make clear that there is no such option.

**C. Step #6**

PG&E, SCE, and SDG&E have no objection to this proposed language change, as it clarifies the intended meaning of Step #6.

Respectfully Submitted,

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January 2, 2007

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

On the 2<sup>nd</sup> day of January, 2007, I served a true copy of:

**REPLY OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA  
EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY TO THE  
RESPONSE OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION**

by electronic mail to all parties to R.02-01-011 providing an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 2<sup>nd</sup> day of January, 2007.

/s/

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MARTIE L. WAY

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Downloaded December 28, 2006, last updated on December 27, 2006

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**Commissioner Assigned:** Geoffrey F. Brown on December 27, 2004; **ALJ Assigned:** Thomas R. Pulsifer on May 1, 2002

## CPUC DOCKET NO. R0201011 CPUC REV 12-27-06

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